

IN THE MATTER OF	*	BEFORE THE MARYLAND
JAMES MANWARING, D.M.D.	*	STATE BOARD OF
Respondent	*	DENTAL EXAMINERS
License Number: 6645	*	Case Number: 2007-268
* * * * *	*	* * * *

FINAL DECISION AND ORDER

I. BACKGROUND

The Maryland State Board of Dental Examiners (the "Board") charged JAMES MANWARING, D.M.D. ("Dr. Manwaring" or the "Respondent"), date of birth: 04/19/51, License Number 6645, under the Maryland Dentistry Act (the "Act"), Md. Health Om. Code Ann. ("H.O.") §§ 4-101 *et seq.* for violations of H.O. § 4-315(a). The Board held an evidentiary hearing in this matter and issues this order after consideration of the entire record. A quorum of the Board was present at the hearing.

The Board charged the Respondent under the following provisions of the Act: H.O. § 4-315:

(a) *License to practice dentistry.* - Subject to the hearing provisions of § 4-318 of this subtitle, the Board may ... reprimand any licensed dentist, place any licensed dentist on probation, or suspend or revoke the license of any licensed dentist, if the ... licensee:

(2) Fraudulently or deceptively uses a license;

(4) Is convicted of or pleads guilty or nolo contendere to a felony or a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;

(5) Provides professional services while: (ii) Using any narcotic or controlled dangerous substance, as defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of therapeutic amounts or without valid medical indication;

(16) Behaves dishonorably or unprofessionally, or violates a professional code of ethics pertaining to the dentistry profession; [and/or]

(20) Willfully makes or files a false report or record in the practice of dentistry.

The Board alleged that the Respondent violated the following professional code of ethics provision: American Dental Association, *Principles of Ethics and Code of Professional Conduct* (2005), § 2.D., which provides:

2. D. PERSONAL IMPAIRMENT.

It is unethical for a dentist to practice while abusing controlled substances, alcohol or other chemical agents which impair the ability to practice. All dentists have an ethical obligation to urge chemically impaired colleagues to seek treatment. Dentists with first-hand knowledge that a colleague is practicing dentistry when so impaired have an ethical responsibility to report such evidence to the professional assistance committee of a dental society.

At the hearing, the state introduced 23 exhibits. The Respondent entered 12 exhibits into evidence. The Respondent was the only witness who testified.

II. FINDINGS OF FACT

The State and the Respondent stipulated to the allegations of fact in the charging document. Based upon this and the entire record, the Board makes the following findings of fact:

1. At all times relevant to these charges, the Respondent was and is licensed to practice dentistry in the State of Maryland. The Respondent initially received his license to practice dentistry in Maryland on June 7, 1978, under License Number 6645.

2. At all times relevant to these charges, the Respondent was affiliated with a dental practice located at 16220 Frederick Road, Suite 400, Gaithersburg, Maryland 20877.

3. On or about January 6, 1993, the Board issued an Order for Summary Suspension of License to Practice Dentistry against the Respondent pursuant to Md. State Gov't Code Ann. § 10-405(b)(1984),¹ finding that the public health, safety and welfare imperatively required emergency action. The Board took such action after making the following admissions to Board investigators: that during the course of providing professional services, he self-administered approximately 25 to 30 milligrams of a narcotic that had been left in a syringe after use for a patient procedure; that he was "on probation" resulting from a criminal proceeding in which he was charged with "writing prescriptions for someone else"; and that he had a history of chemical dependency and treatment for such dependency.

4. By letter dated January 14, 1993, the Respondent requested a hearing on the Board's action. The Board granted the Respondent's request and convened an evidentiary hearing on February 17, 1993.

5. On or about May 7, 1993, the Board issued disciplinary charges against the Respondent, alleging that he violated various provisions of the Act.

6. On or about May 10, 1993, the Board issued an Order affirming its previously issued Order for Summary Suspension. In its Order, the Board concluded the following:

¹ This provision is currently codified as Md. State Gov't Code Ann. § 10-226(c)(2).

Respondent has an eleven year history of substance abuse, including abuse of medication which he obtained in his dental office or which he obtained by illegally using his dental license and his DEA license. Since Respondent's last inpatient admission in 1991, he has on at least three occasions relapsed into substance abuse. In May, 1992, Respondent knowingly accepted a prescription for Fiorinal with codeine, a substance to which he had been addicted in the past. In July, 1992, Respondent knowingly accepted a prescription for narcotic medication for relief of pain when he could have been treated with a non-narcotic pain reliever. In July, 1992, he injected himself in the dental office with Demerol, which had been left over from treatment of a patient.

Throughout this eleven year history of drug addiction, Respondent has received both inpatient and outpatient treatment, including urine surveillance, specifically for substance abuse. Although Respondent's treating psychiatrist was aware of the first two relapses, Respondent attempted to conceal his abuse of Demerol on July 23, 1992 by failing to keep his next appointment with his therapist where he would be required to submit to urine surveillance. Moreover, he failed to inform his therapist of his abuse until after he was confronted by his therapist.

Finally, Respondent has been arrested on three occasions since 1990 for crimes relating to his substance abuse. Indeed, Respondent was on probation with the Circuit Court for Montgomery County for driving under the influence of drugs and alcohol at the time he injected himself in his office with a narcotic.

Respondent and his partner in his dental practice established an office protocol to minimize Respondent's access to narcotics; however, the office was operating under the protocol when Respondent obtained the Demerol. Respondent's partner subsequently properly destroyed all narcotics in the office and further developed the office protocol to limit the office's use to non-narcotic methods of pain relief and to ensure that Respondent would not have access to nitrous oxide. However, previous controls, including outpatient treatment with urine surveillance and criminal probation, have not been sufficient.

Through testimony of Respondent's psychiatrist, Respondent acknowledges he has a substance abuse problem. Although Respondent, through his psychiatrist's testimony, offers explanations for his three recent relapses in May and July 1992, the Board is not convinced that relapses will not occur again. In light of Respondent's significant history of substance abuse, the Board finds that the risk of relapse is significant. Respondent attempts to assure the Board that the risk of relapse has been minimized by regular outpatient therapy, increased urine surveillance, increased attendance at support groups, the removal of narcotics from the dental office and the additional office protocol governing nitrous oxide. However, the evidence indicates that these mechanisms have failed in the past. Moreover, if licensed to practice dentistry, Respondent would continue to hold a DEA license, which authorizes him to prescribe controlled dangerous substances, including barbiturates and narcotics. Even with access to narcotics in the dental office being removed, Respondent could continue to obtain narcotics in the hospital where he has privileges or by writing prescriptions for himself.

Based on the above, the Board concludes that the public health, safety, and welfare imperatively require the summary suspension of Respondent's license to practice dentistry. The Board is charged with the responsibility of assuring the provision of safe, quality dental care to the citizens of this State. Respondent's history of substance abuse, combined with several recent relapses, present a serious potential of continued abuse in the future. Because the evidence indicates that Respondent's drug use presents a significant threat to the safety of his patients, the Board concludes that summary suspension is required.

6. On or about July 28, 1993, the Respondent entered into a Consent Order with the Board, which resolved the charges the Board issued against him on May 7, 1993. In this Consent Order, the Board found as matters of fact that the Respondent: admitted writing "illegal" prescriptions for Fiorinal #3, a Schedule III controlled dangerous substance, for "fictitious people and then picked them up, assuming their identities," after which he ingested the drugs for non-dental reasons; and self-administered a narcotic that had been left in a syringe after use for a patient procedure, during the course of providing professional services.

7. The Board found as matters of law that the Respondent's actions constituted a violation of the following provisions of the Act: H.O. § 4-315(a)(2), fraudulently or deceptively uses a license; H.O. § 4-315(a)(5), provides professional services while: (i) under the influence of alcohol; or (ii) using any narcotic or controlled dangerous substance, as defined in Article 27 of the code, or other drug that is in excess of therapeutic amounts or without valid medical indication; and H.O. § 4-315(a)(16), behaves dishonorably or unprofessionally.

8. Pursuant to the terms of the Consent Order, the Board suspended the Respondent's dental license for a period of thirty (30) months, after which the suspension would be stayed, conditioned upon a favorable recommendation from the Committee for the Rehabilitation of Dentists; and that if the suspension were stayed, the Respondent would be placed on probation for a period of eight (8) years, subject to various terms and conditions, including compliance with all recommended treatment programs and testing, and notification of all positive test results.

9. On or about April 24, 2007, a representative of the Montgomery County Police Department notified the Board that he was investigating the Respondent for alleged prescription fraud and requested that the Board initiate an investigation of the Respondent.

10. On or about June 7, 2007, the Respondent submitted an application for renewal of his dental license to the Board. On page three (3) of the application, under Section III-Character and Fitness, the Respondent responded "YES" to Question (j), which states:

SINCE JULY 2005

j. Has the use of drugs and/or alcohol resulted in an impairment of your ability to practice your profession?

11. The Respondent supplemented his response to Question (j), stating, "I am participating with the Dentist Well-Being Program. Please contact Dr. Robert Miller, Chairman of the Committee, for more information."

12. Board investigation determined that the Respondent was admitted for inpatient opiate abuse treatment in or around April 2007. The Respondent disclosed that he had relapsed and developed a drug dependency in or around April 2006, and that since that time, his use of Percocet (a Schedule II controlled dangerous substance) had increased to 16 to 20 tablets per day. The Respondent further disclosed that over the three week period prior to his admission for opiate dependence, he had used as many as 25 tablets of Percocet per day.

13. On or about September 17, 2007, the Respondent was charged under Case Number 2D00200895 with several counts of controlled dangerous substance violations in Montgomery County, Maryland, based on the investigation by the Montgomery County Police Department. The application in support of the Statement of Charges stated that on multiple occasions, the Respondent fraudulently wrote prescriptions for narcotic medications (specifically, Percocet) in the name of his practice partner for various patients, and presented and attempted to fill those prescriptions at a Rockville area pharmacy, for his own use. The investigating detective confirmed with the Respondent's practice partner that the Respondent had been using his practice partner's name to write false prescriptions.

14. On or about December 13, 2007, the Respondent appeared in the District Court of Maryland for Montgomery County and entered a plea of guilty to one count of obtaining a drug by fraud, occurring on or about April 7, 2007, in violation of Md. Criminal Law Code Ann. § 8-610(b)(3).³ The Respondent was sentenced to a term of incarceration of two years, which was suspended in its entirety, and was placed on probation for three years, subject to probationary conditions including a fine of \$250.00, imposition of costs and community service.

15. On or about March 3, 2008, the court revised the original sentence and granted the Respondent probation before judgment, pursuant to Md. Criminal Procedure Code Ann. § 6-220(b).

16. The Board conducted an investigation of the Respondent's prescribing practices and independently determined that in 2007, he fraudulently created/wrote prescriptions in his practice partner's name for actual and fictitious patients, but filled the prescriptions for his own personal use. The Respondent did so without his practice partner's permission or knowledge.

17. On or about August 8, 2008, the Respondent, under Citation Number OFE59208, was arrested in Montgomery County for driving/attempting to drive while under the influence of alcohol, in violation of Md. Transportation Article Code Ann. § 21-902(a)(1).

18. On or about March 9, 2009, the Respondent appeared in the District Court of Maryland for Montgomery County and entered a plea of guilty to driving while under the influence of alcohol, in violation of Md. Transportation Article Code Ann. § 21-902(a)(1).

The charge reads, "On or about April 7, 2007, did obtain a prescription drug, to wit: Percocet, by fraud, deceit and misrepresentation."

19. The Respondent was sentenced to a term of incarceration of one (1) year, with all but three (3) months of said sentence suspended, to be served through home detention, commencing on or about April 17, 2009. The Respondent was also ordered to: pay a fine of \$1000.00, of which \$500.00 was suspended; pay court costs; and follow additional probationary conditions.

20. On or about March 31, 2009, the Respondent appeared in the District Court of Maryland for Montgomery County on a violation of his probation for obtaining a drug by fraud. The Court found the Respondent in violation of his probation and continued his probation.

21. The Respondent admitted at the hearing that he had an addiction to Percocet and alcohol. He admitted to taking as many as twenty-five Percocets in the evening. Then, he admitted that he would wake up in the morning and treat patients, while still under the influence of Percocet. He admitted that he had treated patients while under the influence of narcotics and/or CDS.

III. CONCLUSIONS OF LAW

Dr. Manwaring's fraudulent prescribing practices and abuse of controlled substances, as described above, constitute, in whole or in part, a violation of one or more of the following provisions of the Act: fraudulently or deceptively using a license, in violation of H.O. § 4-315(a)(2); providing professional services while using any narcotic or controlled dangerous substance, as defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of therapeutic amounts or without valid medical indication, in violation of H.O. § 4-315(a)(5); behaving dishonorably or unprofessionally, or violating a professional code of ethics pertaining to the dentistry profession, in violation of H.O. § 4-315(a)(16); and/or willfully making or filing a false report or record in the practice of dentistry, in violation of H.O. § 4-315(a)(20).

Dr. Manwaring admitted to providing professional services while under the influence of narcotics and/or CDS. This conduct violates H.O. § 4-315(a)(5). The Board finds that Dr. Manwaring's actions were both dishonorable and unprofessional. The Dr. Manwaring's actions, as described above, constitute, in whole or in part, a violation of Section 2.D. of the Principles of Ethics and Code of Professional Conduct (2005) of the American Dental Association. Dr. Manwaring's treatment of patients while under the influence of Percocet. The Board finds that Dr. Manwaring violated H.O. § 4-315(a)(16).

Dr. Manwaring's plea of guilty to obtaining a drug by fraud, as described above, constitutes, in whole or in part, being convicted of or pleading guilty or nolo contendere to a felony or a crime involving moral turpitude, whether any appeal or other proceeding is pending to have the conviction or plea set aside, in violation of H.O. § 4-315(a)(4). The crime of obtaining drugs by fraud is also a violation of the Board's practice act. Accordingly, the Board finds that this crime was also a fraudulent use of his license in violation of H.O. § 4-315(a)(2). ~

IV. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby:

ORDERED that the Respondent's license to practice as a dentist is hereby **SUSPENDED** for twenty four months; and it is further

ORDERED that the Respondent shall be placed on immediate PROBATION at least until March 23, 2016, subject to the following conditions:

1. No later than ten (10) days from the effective date of this Order, the Respondent will sign a contract with the Maryland Dentist Well Being Committee (the "WBC") for a minimum of three (3) years in duration;
2. No later than ten (10) days from the effective date of the WBC Contract The Respondent will present himself to a drug testing laboratory chosen by the WBC for the on-site collection of hair follicle samples for testing. Said collection will be at The Respondent's expense and will be conducted by laboratory personnel at least every ninety (90) days beginning from the date of initial collection for the duration of the WBC contract. Compliance will be monitored by the WBC. The WBC shall immediately notify the Board of a positive test result and of The Respondent's failure to present himself for collection;
3. The Respondent must comply with any treatment recommendations this Board approved healthcare provider may make. Compliance will be monitored by the WBC;
4. For a period of three (3) years from the effective date of this Agreement, the Respondent will hold no Controlled Dangerous Substance ("CDS") Certificate nor will he hold a Drug Enforcement Agency ("DEA") permit. After three (3) years have elapsed from the effective date of this Agreement The Respondent may petition the Board to allow him to apply for a CDS Certificate and DEA permit;
5. Prior to the Board lifting the suspension imposed, the Respondent shall take and pass a Board approved ethics tutorial.
6. After the suspension has been lifted, the Respondent may seek employment as a dentist. The Respondent shall obtain Board approval prior to accepting any position.
7. The Respondent shall arrange for his supervisor at his place of employment to submit written quarterly reports to the Board evaluating the Respondent's practice. An unsatisfactory report will be considered a violation of this Order;
8. The Respondent shall submit to the Board written quarterly reports describing his progress;

9. In the event the Respondent moves permanently or temporarily, the Respondent shall notify the Board of the new address and phone number within three days of the move;
10. Failure to comply with any of the terms of this Agreement, including a positive drug screen will result in immediate suspension of The Respondent's Maryland dental license without either prior notice or an opportunity to be heard, provided that he is afforded an opportunity for a show cause hearing before the Board at the next scheduled meeting of the Board. After a notice and a hearing, and a determination of a violation, the Board may impose any other disciplinary sanctions it deems appropriate, including but not limited to revocation or suspension, said violation being proved by a preponderance of the evidence. A resulting order shall be public in nature with this Agreement incorporated there in;
11. Any violation of the Maryland Dentistry Act or of its regulations shall constitute a violation of this Agreement and may subject The Respondent to disciplinary action by the Board;
12. A guilty verdict or probation before judgment sentence for any crime, except minor traffic offenses not involving drugs or alcohol, shall constitute a violation of this Agreement and may subject The Respondent to disciplinary action by the Board; and
13. The Respondent shall be responsible for all costs incurred under this Order.

ORDERED that this is a formal order of the Maryland Board of Dental Examiners and as such is a public document pursuant to the Md. Code Ann., State Gov't, § 10-617(h).

03/23/2012

Date

T. Earl Flanagan, Jr., D.D.S.

T. Earl Flanagan, Jr., D.D.S., President
Maryland Board of Dental Examiners

NOTICE OF RIGHT TO APPEAL

Any person aggrieved by a final decision of the Board under Md. Health Occ. Code Ann. § 4- 319(a) may take a direct judicial appeal within thirty (30) days as provided by Md. Health Occ. Code Ann. § 4- 319(b), Md. State Gov't Code Ann. § 10-222 and Title 7, Chapter 200 of the Maryland Rules, including Md. Rule 7-203 ("Time for Filing Action").

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